83-712

No. 83-72

IN THE
Supreme Court of the United States
October Term, 1983

State of New Jersey,
Petitioners,

v.

T.L.O., a Juvenile,
Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF NEW JERSEY

MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE

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BRIEF AS AMICUS CURIAE

The New Jersey School Boards Association has moved the Court for leave to appear as amicus curiae herein for the purposes of filing the attached brief.

Consent to file this brief has been obtained in writing from Lois DeJulio, First Assistant Deputy Public Defender, State of New Jersey and telephone consent initially was believed to be received from the Attorney General. (Affidavits

attached).

Respectfully submitted,

Paula A. Mullaly

Paula A. Mullaly
General Counsel to
New Jersey School
Boards Association

Thomas F. Scully

Thomas F. Scully
Assistant Counsel to
New Jersey School
Boards Association

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MEMORANDUM OF THE NEW JERSEY SCHOOL BOARDS ASSOCIATION IN SUPPORT OF MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

The New Jersey School Boards Association has moved this Court for leave to appear as amicus curiae herein for the purposes of filing the attached brief. While consent was received from the Public Defender Appellate Section, the Association was unable to receive formal consent from the Attorney General, although initial phone conversations indicated such

was forthcoming.

Amicus curiae, New Jersey School Boards Association, is a statutory, nonprofit organization, comprised of approximately 600 Boards of Education in the State of New Jersey. N.J.S.A. 18A:6-45. The bylaws of the Association cite as major objectives to encourage and aid all movements for the improvement of educational affairs of the state and the betterment and welfare of the children. The issue before this Court impacts dramatically on individual boards of education and their employees and students. Resolution of the issues before this Court will dictate the actions which any board of education and its agents may take in efforts to maintain discipline and safety within the schools of their district. It is, therefore, imperative that the New Jersey School Boards Association participate in this case and effectively argue on behalf of their

membership.

The applicability of the exclusionary rule and the standards to which school officials must conform in the maintaining schools are the issues this Court has elected to address. The New Jersey School Boards Association has adopted the following policy with respect to these issues:

> The New Jersey School Boards Association recognizes that public school students have the constitutional right to be free from unreasonable searches and seizures by any person acting in an official capacity on behalf of a local school district. It is believed to be best for all parties concerned if the search of a student by a school official were permissible, only where the official had a reasonable suspicion that a school rule or a state law was being violated.

With this policy position as a base, amicus will urge the Court to take a novel approach to the exclusionary rule controversy, and in so doing properly balance the competing interests at stake in this matter.

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AFFIDAVIT

STATE OF NEW JERSEY,
SS.
COUNTY OF MERCER

Thomas F. Scully, of full age being duly sworn according to law upon his oath deposes and says:

1. I am Assistant Counsel to the New Jersey School Boards Association [hereinafter the Association], a non-profit corporation created by the New Jersey Legislature, pursuant to N.J.S.A. 18A:6-45 et seq.

2. On January 18, 1983, the New Jersey Supreme Court granted the

Association's motion to participate as amicus curiae, solely by the filing of a brief, In the Matter of T.L.O.

3. On August 8, 1983, the New Jersey Supreme Court issued its ruling in said case. This holding represents an adoption of the position argued by the Association.

4. The Association requests the consent of the parties for leave to participate in New Jersey v. T.L.O., No. 83-712, as amicus curiae.

5. On Thursday, December 8, 1983, the Office of the New Jersey Public Defender informed me by telephone that they would consent to the Association's participation as amicus curiae in said case. On December 12, 1983 the Association received written confirmation of this consent. (Appendix C).

6. On Monday, December 12, 1983, pursuant to a telephone conversation I had with Alan J. Nodes, Deputy Attorney General, attorney for the petitioner, it was

my understanding that consent would be granted and I was instructed to provide Mr. Nodes with a consent form for the Association to participate as amicus curiae.

7. On Tuesday, December 20, 1983 I was advised by Mr. Nodes in a telephone conversation that we would receive a written statement on the Attorney General's response to our request. This response has not yet been received.

Thomas F. Scully
New Jersey School
Boards
Association

Sworn and
Subscribed to
before me
this 6th day
of January,
1984.

Russell W. Weinsh.
Attorney at Law
State of New Jersey

No. 83-72

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Supreme Court of the United States
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State of New Jersey,
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AFFIDAVIT

STATE OF NEW JERSEY,
SS.
COUNTY OF MERCER

Paula A. Mullaly, of full age being duly sworn according to law, upon her oath deposes and says:

1. I am the Assistant Executive Director/General Counsel to the New Jersey School Boards Association, [hereinafter the Association], a non-profit corporation created by the New Jersey Legislature, pursuant to N.J.S.A. 18A:6-45 et seq.

2. All district boards of education in the State are compelled to be members of

the Association. The Association is charged with the duty to "encourage and aid all movements for the improvement of the educational affairs of th[e] State." N.J.S.A. 18A:6-47.

3. The Association is governed by a Board of Directors, duly elected by its membership, as set forth in the Bylaws of the New Jersey School Boards Association, Article VII. (Appendix A). On September 10, 1982, the Board of Directors adopted a policy on school searches, which states:

> The NJSBA recognizes that public school students have the constitutional right to be free from unreasonable searches and seizures by any person acting in an official capacity on behalf of a local school district. The Association believes that it is best for all parties concerned if a search of a student by a school official is conducted only where the official has a reasonable suspicion that a school rule or state law is being violated. (File Code 5142.12)

4. On January 18, 1983, the New Jersey Supreme Court granted the

Association's motion to participate as amicus curiae, solely by the filing of a brief, In the Matter of T.L.O. (Appendix B).

5. On August 8, 1983, the New Jersey Supreme Court issued its ruling in said case, holding that school district personnel may conduct student searches whenever there is a "reasonable suspicion" that illegal substances or activities are present. In so holding, the Court adopted the position argued by the Association.

6. Pursuant to this Court's granting of the State of New Jersey's petition for certiorari, and R.36 of the United States Supreme Court Rule, I requested consent from the parties for leave to participate in New Jersey v. T.L.O., No. 83-712, as amicus curiae.

7. On Thursday December 8, 1983, the office of the New Jersey Public Defender granted its consent in a telephone

conversation between Lois A. DeJulio, Esq., attorney for respondent, and Thomas F. Scully, Esq., Assistant Counsel, New Jersey School Boards Association, for the Association's participation as amicus curiae in the said case. On December 12, 1983 the Association received written confirmation of this consent. (Appendix C).

8. On Monday, December 12, 1983, pursuant to a telephone conversation between Alan J. Nodes, Deputy Attorney General, attorney for petitioner, and Thomas F. Scully, Esq., Assistant Counsel, New Jersey School Boards Association it was my understanding that the Attorney General's Office had consented to the Association's participation as amicus curiae in the said case.

9. On Friday, December 16, 1983, pursuant to a telephone conversation between myself and Victoria Curtis Bramson, Deputy Attorney General, attorney for the

petitioner, I was advised that the Attorney General's office would not grant their consent to the Association's participation as amicus curiae in the said case. In the course of that conversation, I was advised that consent was being withheld due to the Association's differing position from that of the State regarding the application of the exclusionary rule.

10. On December , 1983 the Association received written notice from Irwin I. Kimmelman, Attorney General of New Jersey, that the State was withholding its consent for the Association's participation as amicus curiae in that the matter was an issue of police enforcement and that the Association had no interest in the said case. (Appendix D).

11. The Association is bringing the within motion for leave to participate as amicus curiae before this Court based upon the firm belief that the decision rendered

in this matter will impact on school operations throughout the United States and more specifically, directly impact upon the operation and policies of the members of the New Jersey School Boards Association.

Paula A. Mullaly

Paula A. Mullaly
New Jersey School
Boards
Association

Sworn and
Subscribed to
before me
this 14th day
of December,
1983.

Russell Weiss, Jr.

Attorney at Law
State of New Jersey

No. 83-72

IN THE
Supreme Court of the United States
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AMICUS CURIAE BRIEF OF THE NEW JERSEY SCHOOL BOARDS ASSOCIATION

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PROCEDURAL HISTORY

On March 7, 1980 a complaint (JD-1322-80) was filed in Middlesex County Court alleging that juvenile T.L.O. possessed marijuana with intent to distribute, in violation of N.J.S.A. 24:21-19(a)(1) and N.J.S.A. 24:21-20(a)(4). Pursuant to published disciplinary procedures, Piscataway High School administratively suspended T.L.O. for ten days.

T.L.O., by her parents, filed a motion in Superior Court, Chancery Division, to show cause why T.L.O. should not be reinstated in school prior to the hearing on the juvenile delinquency complaint.

On March 23, 1980, the Chancery Division upheld the suspension for smoking cigarettes, however vacated the suspension which had been imposed for possession of marijuana. The Court found that the evidence obtained in the warrantless search of the purse was obtained in violation of

T.L.O.'s rights under the Fourth and Fourteenth Amendments to the United States Constitution.

On September 26, 1980 the Middlesex County Juvenile and Domestic Relations Court denied motions to dismiss the complaint and suppress all evidence obtained as a result of the search. The issue involving the suppression of the evidence was relitigated and the search was determined by the Juvenile and Domestic Relations Court to be proper. State in the Interest of T.L.O., 178 N.J. Super. 329, 342-345 (J.D.R. 1980).

On June 18, 1980 a complaint (JD-2717-80) was filed in the Middlesex County Court charging T.L.O. with larceny of under $220.00 from the residence of Rosemarie Cole.

On December 22, 1980 a complaint (JD-83-81) was filed in Middlesex County Court charging T.L.O. with possession of

less than 25 grams of marijuana on school property.

On March 21, 1980, T.L.O. was prosecuted under the original complaint before Judge Nicola, Presiding Judge of the Middlesex County Juvenile and Domestic Relations Court. She was found guilty of possession of marijuana with the intent to distribute.

On June 2, 1981, T.L.O. entered pleas of guilty to all charges contained in complaints JD-83-81 and JD-2717-80.

On January 8, 1982, Judge Nicola imposed a probationary term of one year upon the condition that T.L.O. observe a reasonable curfew, attend school regularly and successfully complete a counseling and drug therapy program.

On February 11, 1982 a Notice of Appeal from the final adjudication of delinquency was filed in the State of New Jersey, Superior Court, Appellate Division. The

Appellate Division affirmed the denial of the motion to suppress, remanded the matter for further proceedings regarding the sufficiency of the Miranda waiver and vacated the final adjudication of delinquency entered on January 7, 1982 and remanded the matter for further proceedings.

On July 16, 1982, T.L.O. filed a notice of appeal to the New Jersey State Supreme Court as a matter of right, based on Judge Joelson's dissent at the Appellate Division level.

On January 27, 1983, the New Jersey Supreme Court granted the New Jersey School Boards Association's motion for leave to file a brief and argue amicus curiae.

On August 8, 1983, the Supreme Court of the State of New Jersey reversed the lower courts and suppressed all evidence obtained in the search of T.L.O.'s purse.

STATEMENT OF FACTS

On the morning of March 7, 1980, a Piscataway High School teacher observed T.L.O., a juvenile, and a girl named Johnson holding what appeared to be lit cigarettes in the girl's lavatory. The teacher escorted the girls to the assistant vice principal's office and accused the girls of violating the school's no-smoking regulations. The assistant vice principal asked the girls whether they had, in fact, been smoking cigarettes. Miss Johnson admitted to smoking and was assigned to attend the school smoking clinic for three days pursuant to school disciplinary policy. T.L.O. adamently denied smoking. The assistant vice principal instructed T.L.O. to go into a private office rather than punishing her. Once inside the office he requested to see the student's purse. Upon opening it, he observed a pack of Marlboro cigarettes. After admonishing

T.L.O. for lying to him, he removed the cigarettes from the purse and observed cigarette rolling papers. Based on his experience he determined that the rolling papers were used in connection with marijuana smoking. A further inspection of the purse revealed marijuana, a metal pipe, a list of people owing T.L.O. money and forty single dollars and ninety-eight cents. A letter from T.L.O. to a friend requesting her to sell marijuana in school.

The assistant vice principal telephoned T.L.O.'s mother and summoned the police. After a conversation at the school, T.L.O. and her mother, at the request of police, went to police headquarters, where after being advised of her rights, T.L.O. admitted to selling marijuana in school. She told the police that she had sold 18 to 20 marijuana cigarettes at school that morning at the price of $1.00 per marijuana cigarette.

T.L.O. was suspended for three days for smoking cigarettes on school property in an undesignated area. She was suspended an additional seven days for possession of marijuana. The police officer who questioned her drafted a complaint charging the juvenile with possession of marijuana with intent to distribute.

AMICUS CURIAE BRIEF OF THE NEW JERSEY SCHOOL BOARDS ASSOCIATION

INTEREST OF AMICUS CURIAE

Amicus curiae, New Jersey School Boards Association, is a statutory, nonprofit organization, comprised of approximately 600 Boards of Education in the State of New Jersey. N.J.S.A. 18A:6-45. The bylaws of the Association cite as major objectives the encouragement of and aid to all movements for the improvement of educational affairs of the state and the betterment and welfare of the children. The issue before this Court impacts dramatically on individual boards of education and their employees and students. Resolution of the issues before

this Court will dictate the actions which any board of education and its agents may take in efforts to maintain discipline and safety within the schools of their district. It is, therefore, imperative that the New Jersey School Boards Association participate in this case and effectively argue on behalf of its membership.

ISSUE PRESENTED FOR REVIEW

THE EXCLUSIONARY RULE IS INAPPLICABLE TO SEARCHES CONDUCTED BY SCHOOL OFFICIALS IN GOOD FAITH.

The applicability of the exclusionary rule and the standards to which school officials must conform in maintaining safety and discipline in the schools are the issues this Court has elected to address. The New Jersey School Boards Association has adopted the following policy with respect to these issues:

> The New Jersey School Boards Association recognizes that public school students have the

constitutional right to be free from unreasonable searches and seizures by any person acting in an official capacity on behalf of a local school district. It is believed to be best for all parties concerned if the search of a student by a school official were permissible only where the official had a reasonable suspicion that a school rule or a state law was being violated.

-3-

With this policy position as a base, amicus will urge the Court to take a novel approach to the exclusionary rule controversy, and in so doing properly balance the competing interests at stake in this matter.

In determining the applicability of the Exclusionary Rule to student searches, a preliminary examination of the constitutional rights of students is necessary. The Fourth Amendment was designed to protect persons against unreasonable searches by government officials, both federal and state. Mapp v. Ohio, 367 U.S. 643 (1961). The

protections, however, do not extend to searches conducted by private citizens. Bardeau v. McDowell, 256 U.S. 465 (1921).

This Court has clearly held that children are persons for the purposes of exercising First Amendment Rights. Tinker v. Des Moines School District, 343 U.S. 583 (1969). If children are entitled to all the First Amendment rights that adults enjoy, it necessarily follows that they are entitled to the same Fourth Amendment rights. There is no reasonable distinction which can be drawn between the rights of citizens to free speech and the right to be free from unreasonable searches.

While the status of school officials as government officials has been a recurrent issue before the courts, existing case law in the State of New Jersey clearly identifies them as such for constitutional purposes. Durgin v. Brown, 37 N.J. 189 (1962); State in the Interest of G.C., 121

N.J. Super. 188 (J.D.R. 1972) Numerous state and federal courts have reached the same conclusion. Tinker v. Des Moines School District, supra, State v. Baccino, 282 A.2d 869 (Del. Super. 971). The New Jersey State Legislature has similarly recognized school officials as government officials by empowering them with the authority to maintain an orderly, disruption-free atmosphere in which students may receive their legislatively-mandated right to a thorough and efficient education. N.J. Constitution, 1947, Article 8, Sec. , par. 1; N.J.S.A. 18A:26-2; N.J.S.A. 18A:38-31.

The New Jersey Supreme Court below properly determined that students possess Fourth Amendment protections as they relate to searches conducted by school officials. State in Interest of T.L.O. 94 N.J. 331 (1983). Moreover, the court correctly distinguished between the standard to be

applied to police officers when determining the reasonableness of search and that which must be applied to a school official. Accordingly, it developed a less stringent standard than the probable cause standard necessary to legitimize searches conducted by police officers. The Court in T.L.O., in identifying this standard, held:

> We are satisfied that when a school official has reasonable grounds to believe that a student possesses evidence of illegal activity or activity that would interfere with school discipline and order, the school official has the right to conduct a reasonable search for such evidence." T.L.O., supra, at 346.

Amicus urges this Court to adopt a similar approach in determining a standard of reasonableness and to recognize the inherent difference between the role of a police officer and that of a school official. Unlike school officials, police officers are provided with substantial training in the procedure for search and

seizure prior to serving on a police force. This knowledge and understanding is reinforced and refined during the course of the officer's career because of his continuing need to deal objectively with crime. It is, therefore, only sensible to impose a strict standard of reasonableness for searches conducted by police officers. The motivations and mechanisms to provide and maintain training necessary to uphold this strict standard are already in place. But perhaps even more importantly, the very precept that assures a free society dictates substantial protection from abuse of the power we must necessarily place in the hands of police officers.

A standard lower than probable cause for police searches would delete the concept of reasonableness so much as to emasculate the Fourth Amendment. Weeks v. U.S., 232 U.S. 383 at 344.

The status of school officials as

government officials subject to the proscriptions of the Fourth Amendment must not be misconstrued so as to make them analogous to police officers. School officials, as professional educators, receive none of the training in the legal technicalities of search and seizure that law enforcement officers must master. It is unreasonable to expect teachers and administrators to undertake such training. Although in some schools criminal activity may take place on a regular basis, investigation of crime is not the basic role of school officials. While a single administrator may be responsible for discipline in a school, that individual is nothing more than an experienced educator who has received administrative training. A concern for crime is simply not a part of the fabric of a teacher or administrator. To interject formal training in constitutional theory pertaining to police

searches would confound rather than enlighten school officials as to how to deal with actual incidents.

It is quite obvious that school officials and police officers serve very different functions in our society. The primary function of a school official is to educate within an environment conducive to learning. In recognition of this important role and in order to permit school officials to function freely and properly, the courts have consistently conferred upon them the special status of standing in loco parentis to students. State in Interest of G.C., 121 N.J. Super. 188; State v. Baccino, supra. Only by partially functioning in the role of a parent can school officials maintain the order necessary for a proper educational environment. N.J.S.A. 18A:37-1 to 5; N.J.S.A. 18A:38-31; N.J.S.A. 18A:26-2. Hence, too strict a standard of

reasonableness would serve to hinder a school official from carrying out his primary role of educating students. This is not to say that the constitutional rights of students can be lightly dismissed. A delicate balance between the competing interests of students and school officials must be struck ultimately. Clearly, in order to properly maintain the educational environment, individual freedoms must give way at some point to the well-being of the student body as a whole.

The "reasonable grounds" standard articulated by the New Jersey Supreme Court properly weighs the constitutional rights of students against the legislatively mandated responsibility of administrators to act in such a fashion as to maintain discipline and order within schools. While school officials cannot run roughshod over student's rights, there is no reason to prevent an official from conducting a

search for the safety of all students when there are reasonable grounds to do so.

Amicus is compelled to assert that while application of the exclusionary rule seems to logically flow from the application of the Fourth Amendment in the view of the New Jersey Supreme Court, the Court may have overlooked again the need to distinguish between the role of school officials and that of police officers.

The exclusionary rule was not designed to address the conduct of school officials acting with the good faith belief that illegal activity was in progress. The rule from its inception was designed to deter law enforcement officials from violating the constitutional rights of citizens in the administration of justice.

> In sum the rule is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than the personal constitutional rights of the aggrieved. United States v. Calandra, 414 U.S. 348.

Over 70 years ago this Court clearly identified deterrence as a major priority.

> The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which resulted in their embodiment in the fundamental law of the land. Weeks, supra, at 344.

The potential for over-zealous actions of police officers is thwarted by excluding illegally seized evidence at trial. Excluding evidence obtained by a school official at trial clearly does not serve a similar purpose.

Application of the same logic to searches conducted by school officials does not result in the same deterrence. Police officers are charged with a higher level of awareness of the constitutional rights of individuals and the ramifications of violating such protections. It is, therefore, imperative to provide this

deterrent mechanism with respect to police conduct. The same rationale cannot be applied to school officials. The roles of police officers and school officials are totally dissimilar. Police officers are sworn to fight crime and protect the public from criminals. The role of a school official as it relates to crime is limited. A school official has little or no concern for ferreting out crime other than for the purpose of maintaining a safe environment for students. Police officers deal specifically with the Fourth Amendment rights of individuals much more frequently than school officials.

The primary concern of school officials in obtaining evidence of illegal conduct on the part of students is to protect the student body as a whole. It is submitted that school officials must be afforded a greater degree of flexibility than the police officer in conducting searches

necessary to protect the school environment. If school officials are held to the same standards as police officers, the orderly and safe environment necessary to providing students a thorough and efficient education may be in jeopardy.

Amicus suggests that a balance must be struck with respect to the conduct of school officials. The exclusionary rule is clearly applicable where it can be shown that it has a deterrent effect. In the school search context, deterrence is possible only where the search was conducted in bad faith. The exclusionary rule serves the purpose for which it was created when applied to searches conducted arbitrarily and in bad faith, and should deter school officials from engaging in constitutionally impermissible conduct in the future.

However, when a school official has a good faith belief that illegal activity is

present, application of the exclusionary rule will often frustrate the ultimate goal to preserve an orderly and safe environment for the student body. A deterrent effect on good faith searches conducted by school officials is clearly not desirable. Applying the exclusionary rule to a good faith effort on the part of school officials would, in fact, have no deterrent effect. A school official would more than likely not be aware of the defect in the search and therefore exclusion of evidence obtained would not effect future conduct. Application of the rule, on the other hand, might have the ultimate deterrent effect whereby the school officials would be afraid to take any action no matter how reasonable. Neither of these results serves the purpose of the Fourth Amendment.

The Courts have long recognized the significance of a "good faith" belief on the part of government officials in

determining the admissibility of evidence seized under questionable circumstances. United States v. Pettier, 422 U.S. 531 (1975); United States v. Janis, 428 U.S. 433 (1976). In Janis this Court refused to apply the eexclusionary rule to a federal civil tax proceeding where evidence was obtained through the execution of a defective warrant. The Court found that the government official had not acted in an illegal fashion and had relied on a good faith belief that the warrant was legally sound. A similar good faith belief on the part of government officials has served in the past to cure otherwise improper searches. In Wood v. Strickland, 450 U.S. 308 (1975) this Court addressed the issue of good faith on the part of an official as a defense in an action where a party claimed the official violated his rights under U.S.C.A. § 1983. The Court held that the defense of good faith immunity would be

defeated only if the official knew or should have reasonably known that the action he took within his sphere of responsibility would violated the rights of the plaintiff. The Court additionally pointed out that such a good faith defense would be unavailable if the government official "maliciously intended" to cause a deprivation of constitutional rights. Amicus urges this Court to adopt the same rationale to searches conducted by school officials. Where school officials act in blatant disregard of the constitutional rights of students, this Court has no alternative other than to exclude any evidence obtained as a result of this misconduct.

A variation of the facts of T.L.O. can demonstrate the utility of the good faith standard. The facts in T.L.O. indicate that she vehemently denied smoking. The vice-principal thereafter, acting in good

faith in searching her purse, should not be subjected to the strict application of the exclusionary rule. If the facts of this case were changed to indicate that she freely admitted to smoking cigarettes any search thereafter must be deemed to have been conducted in bad faith. Such a bad faith action on the part of a school official would clearly dictate strict application of the exclusionary rule. In this situation the exclusionary rule would provide the deterrent effect for which it was designed.

In Harlow v. Fitzgerald, 102 S.Ct. 2727 (1982) this Court again addressed the issue of imposing a good faith standard upon government officials as a prerequisite of granting them immunity for unintentional, unlawful conduct. The Court in Harlow reiterated:

> Our decisions consistently have held that government officials are entitled to some form of immunity

> from suits for damages. As recognized at common law, public officers require this protection to shield them from undue interference with their duties and from potentially disabling acts of liability. Harlow, supra, at 2732.

The Court in Harlow recognized the need to provide flexibility for government officials and dealt with the potentially disabling threat of liability being imposed by allowing for a good faith defense. It is clear, however, if the actions taken by the official are blatently in bad faith, this defense will not be available and the official is exposed to any liability naturally resultant from his actions. The same rationale the Court has utilized to protect government officials from liability should be applied to school officials conducting searches. If school officials must operate under the strict application of the exclusionary rule, they will be substantially disabled in their efforts to execute their duties as educators and to

protect the safety and well-being of students. It can hardly be argued that a school official would be unreasonable to search a locker where there is a substantial likelihood that a bomb is present and a good deal of evidence supports that belief. Given these facts the resultant search would certainly be in good faith. This Court must recognize the necessity of providing school officials with this defense, however, or school officials will be paralyzed by the application of rule that simply was not designed to address the good faith conduct of school officials. If school officials cannot rely on their concept of the term "reasonable", they will lose control of the schools and the student body. Some measure of flexibility must be provided to avoid the result.

Amicus respectfully submits that a good faith standard can be effectively imposed

upon school officials in their efforts to operate schools in an orderly and safe fashion. The purpose and spirit of the exclusionary rule and the integrity of the Fourth Amendment remain intact by providing school officials with the flexibility they must have in order to operate schools and provide a thorough and efficient education for children. Allowing this good faith exception to the exclusionary rule as it relates to school officials in no way results in a diminution of the deterrent purpose for which it was created.

CONCLUSION

The New Jersey School Boards Association, in keeping with its adopted policy and consistent with its by-laws, implores this Court to recognize the necessity of providing school officials with a mechanism to control the operation of the public schools. It is respectfully submitted that the exclusionary rule should

not be applied where school officials have acted in good faith, for the reasons and arguments set forth above.

Respectfully submitted,

Paula A. Mullaly

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